

No. 16323 ✓

United States
Court of Appeals
for the Ninth Circuit

AUGUSTINA SEIJO, as Executrix of the Estate
of Juan Seijo, Deceased,

Appellant,

vs.

DONALD L. HOBBS, Et Al.,

Appellees.

Transcript of Record

FILED

APR -1 1959

Appeal from the United States District Court for the
Southern District of California
Southern Division.

PAUL P. O'BRIEN, CLERK

No. 16323

United States
Court of Appeals
for the Ninth Circuit

AUGUSTINA SEIJO, as Executrix of the Estate
of Juan Seijo, Deceased,

Appellant,

vs.

DONALD L. HOBBS, Et Al.,

Appellees.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California
Southern Division.

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Affidavit of Rankin, Maurice J.....	39
Agreed Statement of the Case in Lieu of a Portion of the Record.....	51
Attorneys, Names and Addresses of.....	1
Certificate by the Clerk, Dated January 9, 1959.	48
Certificate by the Clerk, Dated March 3, 1959..	49
Consent to Order Substituting Defendant and Amending Judgment by Hammel, Alva....	41
Consent to Order Substituting Defendant and Amending Judgment by Wooley, Roger S...	42
Findings of Fact, Conclusions of Law and Final Decree	27
Interlocutory Decree Establishing Validity, Priority and Amounts of Claims, Foreclosing Preferred Ship's Mortgage and Award of Attorney's Fees	14
Libel of Foreclosure of Preferred Ship Mortgage and for Monies Due.....	3
Notice of Appeal.....	46
Notice of Motion for Restitution of Defendant and Amendment of Judgment.....	35
Affidavit of Driscoll, John Gerald, Jr.....	36

INDEX	PAGE
Objections to Findings of Fact, Conclusions of Law and Final Decree.....	26
Objections to Order Confirming Sale.....	24
Affidavit of Driscoll, John Gerald, Jr.....	26
Order for Substitution of Defendant and Amendment of Final Decree.....	44
Special Appearance in Opposition to Notice of Motion for Substitution of Defendant and Amendment of Judgment.....	37
Statement of Points Upon Which Appellant In- tends to Rely.....	47
Stipulation as to Facts.....	42
Order Re	44

NAMES AND ADDRESSES OF ATTORNEYS

RANKIN, ONEAL, LUCKHARDT & CENTER,
First National Bank Building,
San Jose 13, California;

LUCE, FORWARD, KUNZEL & SCRIPPS,
ROBERT E. MCGINNIS,
1220 San Diego Trust & Savings Building,
San Diego 1, California,

For Appellant Augustina Seijo, Executrix
of Last Will of Juan Seijo, Deceased.

JOHN GERALD DRISCOLL, JR.,
1123 Bank of America Building,
San Diego 1, California,

For Appellee Donald L. Hobbs, et al.



In the United States District Court, Southern
District of California, Southern Division

In Admiralty—No. 1976-SD-C

SECURITY-FIRST NATIONAL BANK OF LOS
ANGELES, a National Banking Association,

Libelant,

vs.

OIL SCREW SUN KING, Her Engines, Tackle,
Apparel and Furniture; DONALD L. HOBBS;
JOSEPH N. POMBO; JOSEPH MAR-
CHANT; GILBERT D. MARCHANT; MAN-
UEL G. MARCHANT; HARRY S. GARCIA;
JUAN SEIJO; FRANK P. RODRIGUES;
JOHN FARINHA; FRANCISCO S.
JARDIM; CARMEN SEIJO; MARIA TEIX-
ERIA; MANUEL JOSEPH FERNANDES;
MARGARET MADRUGA; MANUEL P.
AMARAL; AUGUST R. LUIS, JR., and
MARIANA F. LUIS,

Respondents.

LIBEL OF FORECLOSURE OF PREFERRED
SHIP MORTGAGE AND FOR MONIES DUE

To the Honorable Judges of the United States Dis-
trict Court for the Southern District of Cali-
fornia:

The libel of Security-First National Bank of Los
Angeles, a national banking association, libelant,
against the Oil Screw Sun King, her engines, tackle,

apparel and furniture, and Donald L. Hobbs, Joseph N. Pombo, Joseph Marchant, Gilbert D. Marchant, Manuel [2*] G. Marchant, Harry S. Garcia, Juan Seijo, Frank P. Rodrigues, John Farinha, Francisco S. Jardim, Carmen Seijo, Maria Teixeira, Manuel Joseph Fernandes, Margaret Madruga, Manuel P. Amaral, August R. Luis, Jr., and Mariana F. Luis, respondents, in a cause civil and maritime of foreclosure of a preferred mortgage on said vessel and for monies due, alleges:

I.

The libelant at all times hereinafter mentioned was and is a national banking association with its principal place of business in the City of Los Angeles, State of California, in the Southern District of California.

II.

The Oil Screw Sun King is now, or during the currency of process herein will be, within the Southern District of California and within the jurisdiction of this Court. Upon information and belief that the respondents, Donald L. Hobbs, Joseph N. Pombo, Joseph Marchant, Gilbert D. Marchant, Manuel G. Marchant, Harry S. Garcia, Juan Seijo, Frank P. Rodrigues, John Farinha, Francisco S. Jardim, Carmen Seijo, Maria Teixeria, Manuel Joseph Fernandes, Margaret Madruga, Manuel P. Amaral, August R. Luis, Jr., and Mariana F. Luis, and each of them, are residents of the State of California and subject to the process of this Court.

*Page numbering appearing at foot of page of original Certified Transcript of Record.

III.

On June 27, 1951, said Oil Screw Sun King was owned by the respondents, Donald L. Hobbs, Joseph N. Pombo, Joseph Marchant, Gilbert D. Marchant, Manuel G. Marchant, Harry S. Garcia, Juan Seijo, Frank P. Rodrigues, John Farinha, Maria Teixeira, Manuel Joseph Fernandes, Margaret Madruga, Manuel P. Amaral, August R. Luis, Jr., and Mariana F. Luis, who on that day executed a promissory note in words and figures as follows: [3]

“Mortgage Note

\$145,000.00

San Diego, California

June 27, 1951

For Value Received, we, as principals, promise to pay in lawful money of the United States of America to the order of Security-First National Bank of Los Angeles, at its office in Westwood Village, Los Angeles, California, the principal sum of One Hundred Forty-five Thousand and no/100 Dollars (\$145,000.00), with interest on the unpaid balance thereof at the rate of four and one-half per cent ($4\frac{1}{2}\%$) per annum from date until paid. Said principal sum and interest shall be paid as follows:

Twenty-nine Thousand and no/100 Dollars (\$29,000.00) or more, and interest, on the 27th day of June, 1952, and Twenty-nine Thousand and no/100 Dollars (\$29,000.00) or more, and interest, on the

27th day of each and every June thereafter until the 27th day of June, 1956, on which date the entire balance of principal and interest then unpaid shall become due and payable.

If the interest be not so paid, it shall become part of the principal and thereafter bear like interest as the principal. Should default be made in the payment of any installment of principal or interest when due or in the carrying out of or performing of any of the terms and conditions of the mortgage given to secure the payment of this note, then the entire unpaid principal of this note, together with interest due thereon, shall immediately become due and payable at the option of the holder hereof.

In addition to the payments hereinabove provided, we, as principals, promise to pay in lawful money of the [4] United States of America to the order of the Payee Seventy-five (75) per centum of the net proceeds from the sale of the vessel's share of the fishing catch of the vessel Sun King so long as any portion of the indebtedness secured by the mortgage executed as collateral for this note remains unpaid. Such proceeds shall be paid to the Payee promptly when received, and shall be applied first against the next maturing installment on account of principal and interest due under this note and then, after payment in full of such installment and interest, the excess, if any, of such proceeds shall be applied on account of the last maturing installment of such principal.

Makers or endorsers and guarantors hereby waive presentment, demand, protest and notice of dishonor and agree to remain bound for payment of this obligation, notwithstanding any extension of time, substitution or release of security or any other indulgence granted, the makers hereby waiving notice of such extension, substitution or other indulgence.

The makers hereof consent to a deficiency judgment on the above debt with the intent that the same shall be paid in full, irrespective of the amount of the realization of the security given herefor.

This note is secured by a First Preferred Ship's Mortgage upon the vessel "Sun King," Official No. 253 028. If said vessel becomes a total loss or a constructive total loss (English Rule), all unpaid principal and accrued interest thereupon shall, at the option of the holder hereof, become immediately due and payable.

The liability upon this note shall be joint and several. [5]

The pleading of any statute of limitations as a defense to any and all obligations hereunder is hereby waived.

The undersigned further promise to pay all cost of collection, including attorney's fees, which may be incurred in the collection of this note.

In event this note is paid prior to maturity from funds received as a result of refinancing through a lending institution other than Payee, there shall be

paid to Payee, in addition to the amount due, including interest, ninety (90) days' interest on the balance due at the time of the prepayment.

/s/ FRANK P. RODRIGUES;

/s/ MARGARET MADRUGA;

AUGUST R. LUIS,

By /s/ MARGARET MADRUGA,
His Attorney-in-Fact;

JOSEPH MARCHANT,

By /s/ JOSEPH N. POMBO,
His Attorney-in-Fact;

GILBERT D. MARCHANT,

By /s/ JOSEPH N. POMBO,
His Attorney-in-Fact;

MANUEL G. MARCHANT,

By /s/ JOSEPH N. POMBO,
His Attorney-in-Fact;

/s/ JOSEPH N. POMBO;

/s/ JOHN FORINHA;

MANUEL P. AMARAL,

By /s/ MARGARET MADRUGA,
His Attorney-in-Fact;

MARIANA F. LUIS,

By /s/ MARGARET MADRUGA,
Her Attorney-in-Fact;

DONALD L. HOBBS,

By /s/ JOSEPH N. POMBO,
His Attorney-in-Fact;

HARRY S. GARCIA,

By /s/ JOSEPH N. POMBO,
His Attorney-in-Fact; [6]

JUAN SEIJO,

By /s/ JOSEPH N. POMBO,
His Attorney-in-Fact;

MANUEL JOSEPH
FERNANDES,

By /s/ JOSEPH N. POMBO,
His Attorney-in-Fact;

/s/ MARIA TEIXEIRA."

Said promissory note was delivered to libelant, the payee thereof, on or about June 27, 1951. A true copy of said promissory note is attached hereto and made a part hereof as Exhibit "A."

That thereafter, on the 23rd day of July, 1951, Francisco S. Jardim, one of the respondents herein,

assumed liability herein on said note in accordance with a written instrument of assumption of liability, a true copy of which is attached hereto and made a part hereof as Exhibit "B."

That thereafter, on the 27th day of November, 1951, Carmen Seijo, one of the respondents herein, assumed liability herein on said note in accordance with a written instrument of assumption of liability, a true copy of which is attached hereto and made a part hereof as Exhibit "C."

IV.

In order to secure the payment of said note, said respondents duly executed and delivered to libelant, as mortgagee, a preferred mortgage of said vessel, dated June 27, 1951, a true copy of which is attached hereto and made a part hereof as Exhibit "D."

V.

At the time said preferred mortgage was executed, said vessel was, and still is, duly registered under the laws of the United States of America, at its home port of San Diego, California. [7]

VI.

Said preferred mortgage was duly recorded in the office of the Collector of Customs at the Port of San Diego, the home port of said vessel, in Liber B-2/7 of Mortgages, folio 46, at 9:35 o'clock a.m. on June 27, 1951, in accordance with Section 30, subsection C, of the Merchant Marine Act of 1920.

All of the acts and things required to be done by the Merchants Marine Act of 1920 in order to give said mortgage the status of a preferred mortgage were duly done or caused to be done by libelant or by the Collector of Customs of the Port of San Diego.

VII.

That on June 15, 1954, libelant and respondents, and each of them, executed an Assignment of Fishing Contract and Boat's Shares with Extension Agreement wherein it was provided, among other things, that in consideration of the within assignment and agreement, it was understood and agreed that the terms of payment of the mortgage promissory note (Exhibit "D" hereof) were modified so that said note would thereafter be payable as follows, to wit:

\$29,000.00 on June 27, 1955, and the balance of the principal on June 27, 1956, together with interest at the rate of $4\frac{1}{2}\%$ per annum, payable annually on June 27th of each year.

That said payments have not been made, notwithstanding demand having been made by libelant upon respondents therefor, and there is now due, owing and unpaid from said respondents to libelant the principal sum of \$57,723.89 by reason of said promissory note, and the said respondents are in default of payment thereof. Interest on said sum is likewise due, owing and unpaid from said respondents to libelant, at the rate of $4\frac{1}{2}\%$ per annum from June 27, 1955. [8]

VIII.

That it is provided in said note that in case of any default in the payment thereof, the makers agree to pay all costs of collection thereof, including a reasonable sum as attorney's fees; that the sum of \$3,500.00 is a reasonable sum for the fees of libellant's proctors in the above-entitled action.

IX.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libellant prays:

1. That process in due form of law according to the rules and practice of this Court in causes of admiralty and maritime jurisdiction may issue against said Oil Screw Sun King, her engines, tackle, apparel and furniture, and that all persons having any interest therein may be cited to appear and answer under oath, all and singular, the matters aforesaid.

2. That citation in personam may issue against respondents, Donald L. Hobbs, Joseph N. Pombo, Joseph Marchant, Gilbert D. Marchant, Manuel G. Marchant, Harry S. Garcia, Juan Seijo, Frank P. Rodrigues, John Farinha, Francisco S. Jardim, Carmen Seijo, Maria Teixeira, Manuel Joseph Fernandes, Margaret Madruga, Manuel P. Amaral, August R. Luis, Jr., and Mariana F. Luis, and that

they be required to appear and answer under oath all and singular the matters aforesaid.

3. That libelant have judgment in personam against respondents in the amount of \$57,723.89, plus interest thereon from June 27, 1955, at the rate of 4½% per annum, until paid, together with libelant's costs and reasonable attorney's fees in the sum of \$3,500.00. [9]

4. That said preferred mortgage be foreclosed and said Oil Screw Sun King be condemned and sold and the proceeds thereof applied in payment of said claims and demands, pursuant to law.

5. That libelant have such other and further relief in the premises as in law and justice it may be entitled to receive.

LILLICK, GEARY, McHOSE,
ROETHKE & MEYERS,

WILLIAM A. C. ROETHKE,

By /s/ WILLIAM A. C. ROETHKE,
Proctors for Libelant.

Duly Verified.

[Endorsed]: Filed January 4, 1957. [10]

In the United States District Court, Southern
District of California, Southern Division
In Admiralty No. 1976-SD-C

SECURITY-FIRST NATIONAL BANK OF LOS
ANGELES, a National Banking Association,
Libelant,

vs.

OIL SCREW SUN KING, Her Engines, Tackle,
Apparel and Furniture; DONALD L. HOBBS;
JOSEPH N. POMBO; JOSEPH MAR-
CHANT; GILBERT D. MARCHANT; MAN-
UEL G. MARCHANT; HARRY S. GARCIA;
JUAN SEIJO; FRANK P. RODRIGUES;
JOHN FARINHA; FRANCISCO S.
JARDIM; CARMEN SEIJO; MARIA TEIX-
ERIA; MANUEL JOSEPH FERNANDES;
MARGARET MADRUGA; MANUEL P.
AMARAL; AUGUST R. LUIS, JR., and
MARIANA F. LUIS, Respondents.

J. T. SILER; STAR-KIST FOODS, INC.; SAN
DIEGO MARINE CONSTRUCTION COM-
PANY, and RAYTHEON MANUFACTUR-
ING COMPANY, Intervenors.

INTERLOCUTORY DECREE ESTABLISHING
VALIDITY, PRIORITY AND AMOUNTS OF
CLAIMS, FORECLOSING PREFERRED
SHIP'S MORTGAGE AND AWARD OF AT-
TORNEY'S FEES

Security-First National Bank of Los Angeles, a
national banking association, having filed its libel

herein on the 4th day of January, 1957, to foreclose a certain preferred mortgage on the [49] Oil Screw Sun King, her engines, tackle, apparel and furniture in which said libel process was prayed against the said Oil Screw Sun King, her engines, etc., as well as process in due form of law against the respondents, Donald L. Hobbs, Joseph N. Pombo, Joseph Marchant, Gilbert D. Marchant, Manuel G. Marchant, Harry S. Garcia, Juan Seijo, Frank P. Rodrigues, John Farinha, Francisco S. Jardim, Carmen Seijo, Maria Teixeira, Manuel Joseph Fernandes, Margaret Madruga, Manuel P. Amaral, August R. Luis, Jr., and Mariana F. Luis, citing them to appear and answer;

And a monition having issued, in accordance with the prayer of the libel and the practice of this Court, to the Marshal of this Court, commanding him to attach and seize the said vessel, and actual notice of the commencement of the suit having been given to the person in charge of said vessel, to wit: Donald L. Hobbs, managing owner of the O. S. Sun King, by the Marshal of this Court on January 8, 1957, as provided by Subsection K of Section 30 of the Merchant Marine Act of 1920, and the Marshal having made his return of said monition, that in obedience thereto he has attached the said vessel and given due notice to all persons claiming the same, that this Court would on the 28th day of January, 1957, proceed to the trial and condemnation thereof should no claim and answer be interposed therefor, which return has been filed, and the usual proclamation

having been made and the respondents, and each of them named herein, having appeared and filed an answer, and the defaults of all non-appearing parties having been entered;

And it appearing that San Diego Marine Construction Co., a California corporation; Raytheon Manufacturing Company, a Delaware corporation; J. T. Siler, d/b/a J. T. Siler Company, and Star-Kist Foods, Inc., a California corporation, having filed intervening libels herein; and it further appearing that no notices [50] of liens have been filed with the Office of the Bureau of Customs, District of San Diego, California;

And it appearing that on June 27, 1951, said Oil Screw Sun King was owned by the respondents, Donald L. Hobbs, Joseph N. Pombo, Joseph Marchant, Gilbert D. Marchant, Manuel G. Marchant, Harry S. Garcia, Juan Seijo, Frank P. Rodrigues, John Farinha, Maria Teixeira, Manuel Joseph Fernandes, Margaret Madruga, Manuel P. Amaral, August R. Luis, Jr., and Mariana F. Luis, who on that day made, executed and delivered a promissory note to Security-First National Bank of Los Angeles, libelant, in the amount of \$145,000.00, with interest at the rate of $4\frac{1}{2}\%$ per annum, with the principal sum and interest payable as follows: Twenty-nine Thousand and no/100 Dollars (\$29,000.00) or more, and interest, on the 27th day of June, 1952, and Twenty-nine Thousand and no/100 Dollars (\$29,000.00) or more, and interest, on the 27th day of each and every June thereafter until

the 27th day of June, 1956, on which date the entire balance of principal and interest then unpaid shall become due and payable, together with all costs of collection thereof, including a reasonable sum as attorney's fees;

And it further appearing that in order to secure payment of the principal of said note with interest on the amount evidenced thereby, the respondents, Donald L. Hobbs, Joseph N. Pombo, Joseph Marchant, Gilbert D. Marchant, Manuel G. Marchant, Harry S. Garcia, Juan Seijo, Frank P. Rodrigues, John Farinha, Maria Teixeira, Manuel Joseph Fernandes, Margaret Madruga, Manuel P. Amaral, August R. Luis, Jr., and Mariana F. Luis, duly executed and delivered to libelant, as mortgagee, a preferred mortgage on the O. S. Sun King, her engines, etc., dated June 27, 1951, as more particularly set forth in the libel herein;

And it further appearing that all of the terms and [51] provisions of the Ship Mortgage Act of 1920 were complied with in respect to said mortgage, and it further appearing that the total amount of \$57,723.89 is still due and unpaid, with interest thereon from thereon from June 27, 1955, and that the non-payment of installments from June 27, 1955, and interest thereon, constitute a default under the terms of said preferred mortgage; and it further appearing that libelant, as mortgagee, acting pursuant to the provisions of the said mortgage and note has duly declared the entire balance on the principal sum to be immediately due and payable

with interest thereon at the rate of $4\frac{1}{2}\%$ per annum, until paid;

And it further appearing that on the 23rd day of July, 1951, Francisco S. Jardim, one of the respondents herein, assumed liability herein on said note and mortgage in accordance with a written instrument of assumption of liability, a true copy of which is attached to the libel herein; and that thereafter, on the 27th day of November, 1951, Carmen Seijo, one of the respondents herein, assumed liability herein on said note and mortgage in accordance with a written instrument of assumption of liability, a true copy of which is attached to the libel herein; and it further appearing from the preferred mortgage that such sums advanced by libellant as mortgagee to preserve and maintain the vessel and insurance thereon, as a result of mortgagors' defaults, should be added to the principal amount due;

And hearings on the validity, priority, amounts due and defenses to the same, if any, of the claims under the libel and intervening libels herein, and the answer of respondents to same, having been held on February 25, 1957, and April 22, 1957, and all parties being represented by counsel, and testimony, both oral and documentary, having been received; and

It further appearing that there is aboard the Oil Screw [52] Sun King a fathometer, the property of Raytheon Manufacturing Company, under a lease

agreement with title reserved to the said Raytheon Manufacturing Company, which reserved title is admitted and acknowledged by the parties hereto and their proctors; and

It being now determined that respondents herein, and each of them, are in default under the note and mortgage hereinabove described and that the principal amount of the said note, interest thereon, and advances by libelant for preservation of the vessel and for insurance thereof, together with reasonable attorney's fees, is now due, owing and payable by respondents, and each of them, to libelant;

And an order for a Writ of Venditioni Exponas having issued on April 22, 1957, that the O. S. Sun King, her engines, etc., be condemned and sold on May 3, 1957, at 2:00 o'clock p.m. of said day, to answer the prayer of the libel;

And the County of San Diego having filed herein a Petition for Payment of Tax Claim from Proceeds of Sale; and having submitted the issues in the petition for the Court's decision;

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed That:

1. The mortgage executed on the 27th day of June, 1951, on the Oil Screw Sun King by respondents herein, as mortgagors, to the libelant herein, as mortgagee, as recited in the libel, for the security of a certain promissory note in the total amount of \$145,000.00, be and the same hereby is declared a valid lien on the Oil Screw Sun King,

her engines, etc., and on all property covered by said mortgage in the amount of \$57,723.89, together with interest at $4\frac{1}{2}\%$ per annum from June 27, 1955, to date, as well as such sums advanced by libelant to preserve and maintain the vessel and for insurance thereof, as hereinafter set forth, prior and senior to all other liens on said vessel. The foregoing [53] libelant and intervening libelants shall also have and recover their costs herein in their respective priorities as hereinafter set forth. Additionally, libelant shall have and recover the amount of \$3,500.00, in accordance with the provisions of the said promissory note herein, as and for the reasonable cost and value of libelant's attorneys' fees;

2. That the proceeds from the sale of said vessel be paid into the registry of the Clerk of this Court and that the following are the amounts due to libelant and intervenors with their respective priorities as follows:

(1) The Security-First National Bank of Los Angeles, libelant and mortgagee, has a valid and subsisting lien prior to all other liens, as follows:

(a) Balance due on the principal of the promissory note of June 27, 1951 \$57,723.89

(b) Interest on said balance due on said promissory note from June 27, 1955 to May 3, 1957, at $4\frac{1}{2}\%$ per annum \$ 5,470.25

(c) Costs of preservation and maintenance of vessel, including insurance, as follows:

(i) Premium on port risk insurance on Sun King from January 4, to May 3, 1957\$ 1,169.88

(ii) Protection and indemnity insurance on Sun King from January 4 to May 3, 1957\$ 561.48

(iii) San Diego Marine Construction Co.—repairs required to get insurance\$ 3,334.83

(iv) Arthur DeFever and James Potts—survey, inspection and appraisal for insurance\$ 190.00

(v) Wharfage charges\$ 184.00

(d) Allowance for attorneys' fees\$ 3,500.00

(e) Libelant's costs of suit\$1,690.96

(2) That subject to the above priority of the Security-First National Bank of Los Angeles, San Diego Marine Construction Co., a California corporation, intervening libelant, has a valid, prior and subsisting lien against the said vessel, as follows:

(a) Invoice of July 27, 1956; repairs ..\$6,254.74

(b) Supplemental repairs\$ 82.93

(c) Interest on above amount at 7% per annum from August 1, 1956, to May 3, 1957\$ 331.20

(d) Costs of suit\$ 30.50

(3) That subject to the above priorities of the Security-First National Bank of Los Angeles and San Diego Marine Construction Company, an intervening libelant, has a valid, prior and subsisting lien against said vessel, as follows:

(a) Agreed net amount for diesel engine furnished vessel\$5,500.00

(b) Costs of suit\$ 30.50

(4) That subject to the above priorities of Security-First National Bank of Los Angeles, San Diego Marine Construction Co., and J. T. Siler, Star-Kist Foods, Inc., a California corporation, has a valid, prior and subsisting lien against the vessel, as follows:

(a) Agreed balance due on open book account\$7,079.02

(b) Interest on above at 7% per annum from August 31, 1956, to May 3, 1957\$ 333.20

(c) Costs of suit\$ 30.50

3. That if the net proceeds of the sale of said Oil Screw Sun King, her engines, tackle, apparel and furniture, are insufficient to pay the amounts awarded to Security-First National Bank of Los Angeles, a national banking association, libelant, a decree in personam in favor of libelant for such deficiency, with interest, shall be entered against respondents Donald L. Hobbs, Joseph N. Pombo, Joseph Marchant, Gilbert D. Marchant, Manuel G. Marchant, Harry S. Garcia, Juan Seijo, Frank

P. Rodrigues, John Farinha, Francisco S. Jardim, Carmen Seijo, Maria Teixeira, Manuel Joseph Fernandes, Margaret Madruga, Manuel P. Amaral, August R. Luis, Jr., and Mariana F. Luis, jointly and severally; that if the net proceeds of the sale of said O. S. Sun King, her engines, etc., are insufficient to pay the amounts awarded intervening libelants herein, to wit: San Diego Marine Construction Co., J. T. Siler, and Star-Kist Foods, Inc., a decree in personam may be entered on behalf of said intervenors for such deficiency against respondents, the court reserving at this time its decision as to whether the same shall be [56] against respondents, insofar as the intervening libels only are concerned, jointly or jointly and severally.

4. That the title to the fathometer on said Oil Screw Sun King is reserved to Raytheon Manufacturing Company.

5. That libelant and intervenors are hereby given the right to purchase said vessel at the Marshal's sale heretofore ordered, and to apply amounts due libelant and intervenors upon the purchase price of the vessel.

6. That the petition of the County of San Diego be denied as claiming a non-maritime lien and one subsequent to the maritime liens adjudicated herein.

Dated: San Diego, California, this 3rd day of May, 1957.

/s/ JAMES M. CARTER,

United States District Judge.

Submitted by:

LILLICK, GEARY, McHOSE,
ROETHKE & MYERS,

WILLIAM A. C. ROETHKE,
LAWRENCE D. BRADLEY,

By /s/ WILLIAM A. C. ROETHKE,
Proctors for Libelant.

[Endorsed]: Filed May 3, 1957.

Docketed and entered May 7, 1957. [57]

[Title of District Court and Cause.]

OBJECTIONS TO ORDER CONFIRMING SALE

Come Now the individual respondents above named and object to the confirmation of the Marshal's Sale of the above-named vessel on the 3rd day of May, 1957, upon the grounds that the said sale was unfair and the bid price, to wit: the sum of \$26,500.00, was and is grossly inadequate.

Said objections are based upon the annexed Affidavit of John Gerald Driscoll, Jr., and the Memorandum of Authorities attached hereto.

Dated: May 10th, 1957.

/s/ JOHN GERALD DRISCOLL, JR.,
Proctor for Individual Re-
spondents. [58]

[Title of District Court and Cause.]

AFFIDAVIT OF JOHN GERALD
DRISCOLL, JR.

State of California,
County of San Diego—ss.

John Gerald Driscoll, Jr., being first duly sworn,
deposes and says:

That he is the Proctor for the individual respondents above named and makes this Affidavit on their behalf.

That on the 15th day of March, 1957, the Secretary of the Interior [62] of the United States, acting under the provisions of Section 4 of the Fish and Wildlife Act of 1956, authorized a loan to be secured by preferred mortgage upon the respondent vessel in the sum of \$126,837.00; that said loan was authorized after due investigation of the condition of said vessel and after an appraisal thereof by competent marine surveyors and appraisers.

That the true value of said vessel is well in excess of said sum of \$126,837.00; that affiant is informed and believes and alleges the fact to be that the appraised value of said vessel by the Fish and Wildlife Service of the Department of the Interior of the United States is \$225,000.00.

/s/ JOHN GERALD DRISCOLL, JR.

Subscribed and Sworn to before me this 10th day of May, 1957.

[Seal] /s/ HAZEL G. LAWDEY,
Notary Public in and for the
Said County and State.

My commission expires Nov. 6, 1960.

[Endorsed]: Filed May 10, 1957. [63]

[Title of District Court and Cause.]

OBJECTIONS TO FINDINGS OF FACT, CON-
CLUSIONS OF LAW AND FINAL DE-
CREE

The individual respondents above named object to the proposed Findings of Fact, Conclusions of Law and Final Decree presented by Libellant, a copy of which was served this day upon the undersigned, Proctor for Respondents, and move to amend the same as follows, to wit:

1. Strike paragraphs 7, 8, and 9 of the proposed Findings of Fact. [64]

2. Amend paragraphs 3, 4 and 5 of the Conclusions of Law by striking from each of said paragraphs the words "and against the respondents, jointly and severally."

3. Strike paragraphs 3, 4 and 5 of the Final Decree.

Dated this 24th day of May, 1957.

/s/ JOHN GERALD DRISCOLL, JR.,
Proctor for Individual
Respondents.

[Endorsed]: Filed May 24, 1957. [65]

In the United States District Court, Southern
District of California, Southern Division

In Admiralty No. 1976-SD-C

SECURITY-FIRST NATIONAL BANK OF LOS
ANGELES, a National Banking Association,

Libelant,

vs.

OIL SCREW SUN KING, Her Engines, Tackle,
Apparel and Furniture; DONALD L. HOBBS;
JOSEPH N. POMBO; JOSEPH MAR-
CHANT; GILBERT D. MARCHANT; MAN-
UEL G. MARCHANT; HARRY S. GARCIA;
JUAN SEIJO; FRANK P. RODRIGUES;
JOHN FARINHA; FRANCISCO S. JAR-
DIM; CARMEN SEIJO; MARIA TEIX-
EIRA; MANUEL JOSEPH FERNANDES;
MARGARET MADRUGA; MANUEL P.
AMARAL; AUGUST R. LUIS, JR.; and
MARINA F. LUIS,

Respondents.

J. T. SILER; STAR-KIST FOODS, INC.; SAN
DIEGO MARINE CONSTRUCTION COM-
PANY; and RAYTHEON MANUFACTUR-
ING COMPANY,

Intervenors.

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND FINAL DECREE

The interlocutory decree, establishing validity,
priority and amounts of claims, foreclosing pre-

ferred ship's mortgage and [66] award of attorney's fees having been entered herein on May 7, 1957, and the United States Marshal, by virtue of a venditioni exponas, having sold at public auction on May 3, 1957, to Edward X. Madruga, the Oil Screw Sun King, her engines, tackle, apparel and furniture, for the sum of \$26,500.00, and the Court having made, on May 10, 1957, its order confirming the Marshal's sale and the United States Marshal having deducted his fees, commissions and expenses for the sale from the aforesaid sale price and having deposited the balance in the amount of \$26,150.88 with the Clerk of the Court, and the Clerk of the Court having, on May 17, 1957, taxed costs and the Order Confirming the Marshal's Sale having been entered on May 21, 1957, and the Court being fully advised in the premises, hereby makes its Findings of Fact, its Conclusions of Law and its Final Decree as follows:

Findings of Fact

1. The preferred ship's mortgage of libelant Security-First National Bank of Los Angeles, is a valid preferred ship's mortgage and is a valid and subsisting lien against the Oil Screw Sun King, her engines, tackle, apparel and furniture, prior and senior to all other liens on said vessel.

2. The respondents herein defaulted on the mortgage note dated June 27, 1951, payable to the order of libelant Security-First National Bank of Los Angeles.

3. The fathometer equipment on board the Oil

Screw Sun King is the property of intervening libelant Raytheon Manufacturing Company, a corporation, under a lease agreement with title reserved to Raytheon Manufacturing Company.

4. The intervening libelant San Diego Marine Construction Company has a valid and subsisting lien against the Oil Screw [67] Sun King subordinate only to the lien of libelant Security-First National Bank of Los Angeles.

5. The intervening libelant J. T. Siler, d.b.a. J. T. Siler Company, has a valid and subsisting lien against the Oil Screw Sun King subordinate only to the liens of the Security-First National Bank of Los Angeles and San Diego Marine Construction Company.

6. The intervening libelant Star-Kist Foods, Inc., has a valid and subsisting lien against the Oil Screw Sun King subordinate only to the liens of the Security-First National Bank of Los Angeles, San Diego Marine Construction Company and J. T. Siler, d.b.a. J. T. Siler Company.

7. The intervening libelant San Diego Marine Construction Company performed repairs on the Oil Screw Sun King at the request of respondents, the reasonable and agreed value of which is the sum of \$3,684.65.

8. The intervening libelant J. T. Siler, d.b.a. J. T. Siler Company, furnished a Diesel engine to the Oil Screw Sun King at the request of respondents,

the reasonable and agreed value of which is the sum of \$3,492.50.

9. The respondents are indebted to intervening libelant Star-Kist Foods, Inc., on an open book account in the agreed amount of \$4,093.50.

10. The petition of the County of San Diego claims a nonmaritime lien.

Conclusions of Law

1. The Court has jurisdiction of all named parties and the subject matter of the libel, the intervening libelants and petitioner. [68]

2. Libelant Security-First National Bank of Los Angeles, is entitled to a decree against the Oil Screw Sun King, her engines, tackle, apparel and furniture and against the respondents, jointly and severally, in the amount of \$73,825.29.

3. Intervening libelant San Diego Marine Construction Company is entitled to a decree against the Oil Screw Sun King, her engines, tackle, apparel and furniture and against the respondents, jointly and severally, in the amount of \$3,684.65.

4. Intervening libelant J. T. Siler, d.b.a. J. T. Siler Company, is entitled to a decree against the Oil Screw Sun King, her engines, tackle, apparel and furniture and against the respondents, jointly and severally, in the amount of \$3,492.50.

5. Intervening libelant Star-Kist Foods, Inc., is entitled to a decree against the Oil Screw Sun King,

her engines, tackle, apparel and furniture and against the respondents, jointly and severally, in the amount of \$4,093.50.

6. Intervening libelant Raytheon Manufacturing Company is the sole owner of the fathometer equipment on the Oil Screw Sun King and is entitled to remove said fathometer equipment.

7. The County of San Diego does not have a maritime lien against the Oil Screw Sun King and is not entitled to any decree against said vessel or the proceeds of the sale.

Final Decree

In accordance with the foregoing Findings of Fact and Conclusions of Law,

It Is Ordered, Adjudged and Decreed:

1. That the balance of \$26,150.88 from the proceeds of the sale of the Oil Screw Sun King, her engines, tackle, apparel and furniture be paid forthwith by the Clerk of the Court to [69] libelant Security-First National Bank of Los Angeles.

2. That libelant Security-First National Bank of Los Angeles recover from respondents Donald L. Hobbs; Joseph N. Pombo; Joseph Marchant; Gilbert D. Marchant; Manuel G. Marchant; Harry S. Garcia; Juan Seijo; Frank P. Rodrigues; John Farinha; Francisco S. Jardim; Carmen Seijo; Maria Teixeira; Manuel Joseph Fernandes; Margaret Madruga; Manuel P. Amaral; August R. Luis, Jr., and Mariana F. Luis, jointly or severally, the

sum of \$47,674.41, with interest thereon from May 4, 1957, at the rate of seven per cent (7%) per annum until paid.

3. That intervening libelant San Diego Marine Construction Company recover from respondents Donald L. Hobbs; Joseph N. Pombo; Joseph Marchant; Gilbert D. Marchant; Manuel G. Marchant; Harry S. Garcia; Juan Seijo; Frank P. Rodrigues; John Farinha; Francisco S. Jardim; Carmen Seijo; Maria Texeira; Manuel Joseph Fernandes; Margaret Madruga; Manuel P. Amaral; August R. Luis, Jr., and Mariana F. Luis, jointly or severally, the sum of \$3,684.65.

4. That intervening libelant J. T. Siler, d.b.a. J. T. Siler Company, recover from respondents Donald L. Hobbs; Joseph N. Pombo; Joseph Marchant; Gilbert D. Marchant; Manuel G. Marchant; Harry S. Garcia; Juan Seijo; Frank P. Rodrigues; John Farinha; Francisco S. Jardim; Carmen Seijo; Maria Teixeira; Manuel Joseph Fernandes; Margaret Madruga; Manuel P. Amaral; August R. Luis, Jr.; and Mariana F. Luis, jointly or severally, the sum of \$3,492.50.

5. That intervening libelant Star-Kist Foods, Inc., recover from respondents Donald L. Hobbs; Joseph N. Pombo; Joseph Marchant; Gilbert D. Marchant; Manuel G. Marchant; Harry S. Garcia; Juan Seijo; Frank P. Rodrigues; John Farinha; Francisco S. Jardim; Carmen Seijo; Maria Teixeira; Manuel Joseph Fernandes; Margaret Madruga; Manuel P. Amaral; August R. Luis, Jr.;

and [70] Mariana F. Luis, jointly or severally, the sum of \$4,093.50.

6. That intervening libelant Raytheon Manufacturing Company is the sole owner of the fathometer equipment on the Oil Screw Sun King and is entitled to remove said fathometer equipment.

7. That petitioner County of San Diego take nothing herein.

Dated: San Diego, California, this 26th day of Sept., 1957.

/s/ JAMES M. CARTER,

United States District Judge.

Submitted by:

LILLICK, GEARY, McHOSE,
ROETHKE & MYERS,

WILLIAM A. C. ROETHKE,

LAWRENCE D. BRADLEY, JR.

By /s/ WILLIAM A. C. ROETHKE,

Proctors for Libelant.

Approved as to substance and form. Also, it is stipulated through the undersigned proctors in behalf of their respective clients that the final decree hereinabove set forth may be made and entered forthwith.

September 24th, 1957.

/s/ JOHN GERALD DRISCOLL, JR.,

Proctor for Respondent.

DONNELLY, MacNULTY AND
BUTLER,

By /s/ RICHARD MacNULTY,
Proctors for San Diego Marine Construction Co., a
Corporation, Intervenor.

REAL & REAL,

By /s/ M. REAL,
Proctors for Star-Kist Foods, Inc., a Corporation,
Intervenor. [71]

/s/ WILLIAM P. CRAWFORD,
Proctor for J. T. Siler, dba J. T. Siler Company,
Intervenor.

JAMES DON KELLER,

/s/ CARROLL H. SMITH,
Deputy D. A., Proctor for County of San Diego,
Petitioner.

LILLICK, GEARY, McHOSE,
ROETHKE & MYERS,

WILLIAM A. C. ROETHKE,

LAWRENCE D. BRADLEY, JR.

By /s/ WILLIAM A. C. ROETHKE,
Proctors for Libellant.

[Endorsed]: Filed September 26, 1957.

Entered September 27, 1957. [72]

[Title of District Court and Cause.]

NOTICE OF MOTION FOR SUBSTITUTION
OF DEFENDANT AND AMENDMENT OF
JUDGMENT

To: Alva Hammel, assignee of Security First National Bank of Los Angeles, Libelant; Roger S. Woolley, assignee of J. T. Siler, Star-Kist Foods, Inc., and San Diego Marine Construction Company, Intervenor; and Augustina Seijo, Executrix of the Estate of Juan Seijo, Deceased:

You, and Each of You, Will Please Take Notice, that [73] on Monday, the 14th day of July, 1958, at the hour of 10:00 o'clock a.m., or as soon thereafter as counsel may be heard, in the courtroom of the above-entitled Court, in the Court House Building, 325 West F Street, San Diego, California, respondents Donald L. Hobbs, Joseph N. Pombo, Joseph Marchant, Gilbert D. Marchant, Manuel G. Marchant, Harry S. Garcia, Frank P. Rodrigues, John Farinha, Francisco S. Jardim, Carmen Seijo, Maria Teixeira, Manuel Joseph Fernandes, Margaret Madruga, Manuel P. Amaral, August R. Luis, Jr., and Mariana F. Luis will move the above-entitled Court for an order substituting Augustina Seijo, as Executrix of the Estate of Juan Seijo, Deceased, as a respondent in the above-entitled action, in the place and stead of Juan Seijo, and amending the judgment in the above-entitled action by substituting said Augustina Seijo, as Executrix of the Estate of Juan

Seijo, Deceased, in the place and stead of Juan Seijo. Said motion will be made upon this notice, the affidavit of John Gerald Driscoll, Jr., attached hereto, and the records and files of said Court.

Dated at San Diego, California, this 23rd day of June, 1958.

/s/ JOHN GERALD DRISCOLL, JR.,
Proctor for the Above-Named
Respondents. [74]

[Title of District Court and Cause.]

AFFIDAVIT OF JOHN GERALD
DRISCOLL, JR.

State of California,
County of San Diego—ss.

John Gerald Driscoll, Jr., being first duly sworn, upon oath deposes and says:

That he is the proctor for respondents in the above-entitled action; that he has been informed and believes, and therefore alleges the fact to be, that Juan Seijo, one of the respondents in this action, died on June 23, 1957, [75] and that thereafter, on or about the 15th day of July, 1957, Augustina Seijo was duly appointed Executrix of his estate by the Superior Court of the State of California, in and for the County of Santa Clara, in proceeding No. 47475 of the records and files of said Court, and that said Augustina Seijo duly qualified as such Execu-

trix and at all times since said date has been and now is the duly appointed Executrix of said estate.

/s/ JOHN GERALD DRISCOLL, JR.

Subscribed and sworn to before me this 23rd day of June, 1958.

[Seal] /s/ HAZEL G. LAWDEY,
Notary Public in and for Said
County and State.

My commission expires November 6, 1960.

[Endorsed]: Filed June 24, 1958. [76]

[Title of District Court and Cause.]

SPECIAL APPEARANCE IN OPPOSITION TO
NOTICE OF MOTION FOR SUBSTITU-
TION OF DEFENDANT AND AMEND-
MENT OF JUDGMENT

Now comes Augustina, Seijo, executrix of the last will of Juan Seijo, deceased, and makes this special appearance without submitting herself to the jurisdiction of the above-entitled court for the purpose of opposing notice of motion for substitution of defendant and amendment of judgment, and quashing the service of such notice upon the ground that this court has no jurisdiction to entertain such motion as the judgment in said cause has long since become final, and not subject to amendment [77] by adding

or bringing in a new party as a respondent subject to such judgment, and upon the ground that said judgment insofar as it purports to be a judgment against Juan Seijo is void and ineffectual for any purpose, and the Court is without jurisdiction to render or enter the same, and the service of the above-mentioned notice of motion for substitution of defendant and amendment of judgment is unauthorized and does not constitute process requiring said executrix to appear or become a party to said action.

This appearance and opposition will be made upon the grounds above mentioned and based upon the affidavit of Maurice J. Rankin filed herewith and the papers, records and files in said cause.

LUCE, FORWARD, KUNZEL
AND SCRIPPS, and

RANKIN, ONEAL,
LUCKHARDT AND CENTER,

By /s/ MAURICE J. RANKIN,
Attorneys for Augustina Seijo, Executrix of the
Last Will of Juan Seijo, Deceased.

Affidavit of service by mail attached.

[Endorsed]: Filed July 18, 1958. [78]

[Title of District Court and Cause.]

AFFIDAVIT OF MAURICE J. RANKIN

State of California,
County of Santa Clara—ss.

Maurice J. Rankin, being first duly sworn, on oath deposes and says:

That he is an attorney at law and a member of the law firm of Rankin, Oneal, Luckhardt and Center maintaining offices in the city of San Jose, County of Santa Clara, State of California;

That he is the attorney for Augustina Seijo, executrix of the last will of Juan Seijo, who died June 23, 1957, being [79] at the time of his death a resident of the County of Santa Clara, State of California;

That thereafter the will of said deceased was admitted to probate in the Superior Court of the State of California, in and for the County of Santa Clara, and on July 25, 1957, letters testamentary in the estate of said decedent were issued to Augustina Seijo and she ever since has been and now is the duly appointed and acting executrix in said estate;

That affiant as attorney for said executrix is familiar with all the facts pertaining to the administration of said estate and all the facts herein averred;

That the purported findings of fact and decree in the above-entitled cause were not made, signed or

entered until September 7, 1957, at which time said Juan Seijo was deceased, he having died June 23, 1957, as hereinabove stated;

That notice to creditors of said estate was published for the time required by law, the first publication being July 30, 1957, said notice requiring all persons having claims against the estate of said decedent to file them with the necessary vouchers in the office of the Clerk of the Superior Court of the State of California in and for the County of Santa Clara within six months after the first publication of said notice or within said period to present the same with the necessary vouchers to the said executrix at 315 First National Bank Building, San Jose, County of Santa Clara, State of California;

That none of the respondents in the above cause who are moving this court for an order substituting said executrix as respondent in said action and amending the judgment thereof by substituting her in place and stead of Juan Seijo, have ever presented or made any claim against the estate of said Juan Seijo by filing a claim for contribution by his estate for or respecting the judgment in the above cause or by presenting such claim [80] as they or any of them might have for contribution by said Juan Seijo or his estate, for any liability or obligation arising out of the joint venture, the subject matter of the above-entitled action, and on which the judgment therein is based, nor have respondents or any of them presented or filed against said estate any claim of any kind or character, and the time

for presentation of such or any claim against said estate has long since expired.

/s/ MAURICE J. RANKIN.

Subscribed and sworn to before me this 14th day of July, 1958.

[Seal] /s/ J. V. ENDERT,
Notary Public in and for the County of Santa Clara,
State of California.

Affidavit of service by mail attached.

[Endorsed]: Filed July 18, 1958. [81]

[Title of District Court and Cause.]

CONSENT TO ORDER SUBSTITUTING
DEFENDANT AND AMENDING JUDGMENT

Alva Hammel, assignee of Security-First National Bank of Los Angeles, Libelant in the above-entitled action, hereby consents to the entry of an order of this Court substituting Augustina Seijo, as Executrix of the Estate of Juan Seijo, Deceased, as a respondent in the above-entitled action, and amending the judgment heretofore entered in said action by substituting said Augustina Seijo as Executrix of said [3] Estate as a judgment debtor in the place and stead of Juan Seijo, Deceased.

Dated this 1st day of July, 1958.

/s/ ALVA HAMMEL.

Duly verified.

[Endorsed]: Filed July 21, 1958. [4]

[Title of District Court and Cause.]

CONSENT TO ORDER SUBSTITUTING
DEFENDANT AND AMENDING JUDGMENT

Roger S. Woolley, assignee of J. T. Siler, Star-Kist Foods, Inc. and San Diego Marine Construction Company, Intervenor in the above-entitled action, hereby consents to the entry of an order of this Court substituting Augustina Seijo, Executrix of the Estate of Juan Seijo, Deceased, as a respondent in the above-entitled action, and amending the judgment heretofore entered in said action by substituting said Augustina [1] Seijo as Executrix of said estate as a judgment debtor in the place and stead of Juan Seijo, Deceased.

Dated this 16th day of July, 1958.

/s/ ROGER S. WOOLLEY.

[Endorsed]: Filed July 21, 1958. [2]

[Title of District Court and Cause.]

STIPULATION AS TO FACTS

It is hereby stipulated by and between counsel for the respondents above named, with the exception of Juan Seijo, Dec'd., and counsel for Augustina Seijo, Executrix of the Estate of Juan Seijo, that:

On October 16, 1957, Roger S. Woolley, assignee of the judgment in favor of the intervenors herein, filed a claim for the amount due and unpaid under

the judgment with the said estate. On [89] March 7, 1958, this claim was rejected and the said assignee was notified in writing as prescribed by law. Thereafter, and within the time allowed by law, the said assignee filed suit on the rejected claim in Santa Clara County, California.

On December 10, 1957, the libelant, Security-First National Bank of Los Angeles, filed a claim with the said estate for the amount of its judgment (\$47,-543.24). This claim was also rejected by the said estate on March 7 or March 17, 1958, by a notice in writing as prescribed by law. No suit or further action has been filed by the said bank to this date.

On, 1958, the Security-First National Bank of Los Angeles assigned its judgment to Alva Hammel. To this date, no claim has been filed by the said Alva Hammel against the said estate, nor has any suit or other action been filed by him against the estate.

Dated: Nov. 6, 1958. .

/s/ JOHN GERALD DRISCOLL, JR.,
Proctor for the Above-Named
Respondents.

RANKIN, ONEAL, LUCKHARDT
AND CENTER and

LUCE, FORWARD, KUNZEL &
SCRIPPS,

By /s/ ROBERT E. McGINNIS,
Attorneys for Augustina Seijo, Executrix of the
Last Will of Juan Seijo, Deceased.

It Is So Ordered.

/s/ JAMES M. CARTER,

Judge of the District Court.

Nunc Pro Tunc November 6, 1958.

[Endorsed]: Filed November 12, 1958. [90]

[Title of District Court and Cause.]

ORDER FOR SUBSTITUTION OF DEFEND-
ANT AND AMENDMENT OF FINAL DE-
CREE

The motion of the individual respondents herein, other than Juan Seijo, for an order substituting Augustina Seijo as Executrix of the Estate of Juan Seijo, deceased, in the place and stead of Juan Seijo, and amending the final decree herein came on regularly for hearing on the 21st day of July, 1958, and on the 3rd day of November, 1958, said respondents appearing by their Proctor, John Gerald Driscoll, Jr., and Augustina Seijo, as such Executrix, appearing in opposition to said motion by her Proctors, Luce, Forward, Kunzel & Scripps and Rankin, Oneal, Luckhardt and Center, and it appearing to the Court that said motion was duly and regularly served upon said Executrix by the United [91] States Marshal in the manner required by law, and it further appearing that Juan Seijo died on the 23rd day of June, 1957, subsequent to the entry of

the interlocutory decree herein, and it further appearing that libelant assigned all of its rights under said final decree to Alva Hammel, and that said intervenors assigned all of their rights under said final decree to Roger S. Woolley, Trustee, and that both of said assignees have filed herein their written consent to the granting of said motion, and the Court having heard argument of counsel, together with stipulations of fact made in open court, and good cause appearing for the granting of said motion,

It Is Hereby Ordered, Adjudged and Decreed as follows:

1. That said motion be, and the same is hereby, granted and Augustina Seijo as Executrix of the Estate of Juan Seijo, Deceased, is hereby substituted as a respondent in this action in the place and stead of Juan Seijo, effective from and after the death of said Juan Seijo on June 23, 1957;

2. That paragraphs 2, 3, 4 and 5 of the Final Decree entered herein on September 27, 1957, be, and the same are hereby, amended and corrected by substituting therein the words "Augustina Seijo, as Executrix of the Estate of Juan Seijo, Deceased" in lieu of the name "Juan Seijo" wherever said name appears in said paragraphs.

Dated this 6th day of November, 1958.

/s/ JAMES M. CARTER,

United States District Judge.

Approved as to Form:

LUCE, FORWARD, KUNZEL &
SCRIPPS and RANKIN,
ONEAL, LUCKHARDT AND
CENTER,

By /s/ ROBERT E. MCGINNIS,
Proctors for Said Executrix.

[Endorsed]: Filed November 6, 1958.

Entered November 12, 1958. [92]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Augustina Seijo, as Executrix of the Estate of Juan Seijo, deceased, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the order for substitution of defendant and amendment of final decree entered in this action on the 12th day of November, 1958.

Dated: December 9, 1958.

LUCE, FORWARD, KUNZEL &
SCRIPPS,

By /s/ ROBERT E. MCGINNIS,
Proctors for Appellant.

Affidavit of service by mail attached.

[Endorsed]: Filed December 11, 1958. [93]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY

Appellant states that it intends to rely on the following points:

1. That the court erred in substituting the Appellant as a respondent in this action in the place and stead of Juan Seijo.

2. That the court erred in amending Paragraphs 2, 3, 4 and 5 of the Final Decree entered [98] herein by substituting therein the words "Augustina Seijo" as Executrix of the Estate of Juan Seijo, deceased, in lieu of the name "Juan Seijo" wherever the name appears.

Dated: Dec. 19, 1958.

RANKIN, ONEAL, LUCKHARDT
AND CENTER and

LUCE, FORWARD, KUNZEL &
SCRIPPS,

By /s/ ROBERT E. MCGINNIS.

[Endorsed]: Filed December 22, 1958. [99]

[Title of District Court and Cause.]

CERTIFICATE BY THE CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below con-

stitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled case:

A. The foregoing pages numbered 1 to 100, inclusive, containing the original:

Libel of Foreclosure of Preferred Ship Mortgage, etc., filed 1/4/57.

Libel in rem and personam in intervention of San Diego Marine Construction Co., filed 1/28/57.

Libel in rem and personam in intervention of J. T. Siler, filed 2/1/57.

Libel in rem and personam in intervention of Star-Kist Foods, Inc., filed 2/4/57.

Interlocutory Decree establishing validity, priority and amounts of claims, etc., entered 5/7/57.

Objections of Respondents to order confirming sale.

Objections of Respondents to Findings of Fact, Conclusions of Law and Final Decree.

Findings of Fact, Conclusions of Law and Final Decree, entered 9/27/57.

Notice of Motion for substitution of Defendant and Amendment of Judgment filed 6/24/58.

Special Appearance in opposition to notice of motion for substitution of defendant and amendment of judgment.

Affidavit of Maurice J. Rankin.

Assignment of Judgment by J. T. Siler.

Assignment of Judgment by San Diego Marine Construction Co.

Assignment of Judgment by Star-Kist Foods, Inc.

Stipulation as to Facts.

Order for substitution of Defendant and Amendment of Final Decree.

Notice of Appeal.

Appellant's Designation of Record on Appeal.

Statement of Points upon which Appellant intends to rely.

I further certify that my fee for preparing the foregoing record, amounting to \$1.60, has been paid by appellant.

Dated: January 9, 1959.

JOHN A. CHILDRESS,
Clerk;

[Seal] /s/ WM. A. WHITE,
Deputy Clerk.

[Title of District Court and Cause.]

CERTIFICATE BY THE CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the Supplemental transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled case:

Consent to Order substituting Defendant and Amending Judgment executed by Roger S. Woolley, 7/16/58.

Consent to Order substituting Defendant and Amending Judgment executed by Alva Hammel, 7/1/58.

(Copy) Stipulation as to Record on Appeal.

Dated: March 3, 1959.

JOHN A. CHILDRESS,
Clerk;

[Seal] /s/ WM. A. WHITE,
Deputy Clerk.

[Endorsed]: No. 16323. United States Court of Appeals for the Ninth Circuit. Augustina Seijo, as Executrix of the Estate of Juan Seijo, Deceased, Appellant, vs. Donald L. Hobbs, Et Al., Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed January 12, 1959.

Docketed: January 15, 1959.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

[Title of District Court and Cause.]

AN AGREED STATEMENT OF THE CASE IN
LIEU OF A PORTION OF THE RECORD

Pursuant to Rule 49 of the Rules of Practice in Admiralty and Maritime cases, the parties to this appeal, believing that the questions presented by the appeal herein can be determined by the Court of Appeals without an examination of all the pleadings, present this statement of the case in lieu of designating the entire record in the case. A stipulation as to the contents of the record on appeal will accompany this agreed statement.

1. The questions presented by this appeal and the points to be relied upon by the appellant are contained in the statement of points upon which appellant intends to rely, which is a part of the designated record in this case.

2. The facts essential to a decision to the questions presented by this appeal are as follows:

A Libel of Foreclosure of Preferred Ship Mortgage was filed on January 4, 1957. Thereafter a libel in rem and in personam in intervention was filed against the respondents in the case by the San Diego Marine Construction Company, praying that the vessel in question be condemned to pay the sum of \$6,298.82 and that the intervenor have judgment against the respondents in this amount. The sum was alleged to have been expended for material and labor in repairing the vessel.

Thereafter, a libel in rem and in personam in intervention was filed by J. T. Siler for the sum of \$6,297.52 and costs and attorney fees, and prayed that the vessel be condemned and sold to pay the said sum and that the intervenor have judgment against the vessel and the persons named as respondents.

Thereafter, a libel in rem and in personam in intervention was filed by Star-Kist Foods, Inc., for the approximate sum of \$7,079.02, and it was prayed that the vessel be condemned and sold to pay the sum and that the intervenor have judgment against the vessel and the persons named as respondents.

Appropriate answers were filed on behalf of the respondents, including Juan Seijo. Juan Seijo was represented by a proctor at all proceedings in the case prior to his death on June 23, 1957.

On May 23, 1957, proposed findings of fact and conclusions of law and final decree were lodged with the Clerk. On May 24, 1957, objections to proposed findings of fact, conclusions of law and final decree were filed on behalf of all respondents. On August 5, 1957, a hearing was held as to the objections to the findings of fact, conclusions of law and final decree. On September 27, 1957, the findings of fact, conclusions of law and final decree were entered.

On or about June 21, 1958, the respondents in the case, with the exception of Juan Seijo, filed a notice of motion for the substitution of Augustina Seijo, as Executrix of the Estate of Juan Seijo, in said action

in the place and stead of Juan Seijo and to amend the judgment previously entered (and included as a portion of the designated record) by substituting the said Augustina Seijo as Executrix of the Estate of Juan Seijo in the place and stead of Juan Seijo. This was thereafter served on Alva Hammel, assignee of the libelant in the action, Roger S. Woolley, assignee of the said intervenor, and the said Augustina Seijo.

Dated this 27th day of January, 1959.

/s/ JOHN GERALD DRISCOLL, JR.,
Proctor for the Above-Named
Respondents.

RANKIN, ONEAL, LUCKHARDT
AND CENTER and
LUCE, FORWARD, KUNZEL &
SCRIPPS,

By /s/ ROBERT E. MCGINNIS,
Proctors for Augustina Seijo, Executrix of the
Estate of Juan Seijo, Deceased.

[Endorsed]: Filed January 28, 1959, U. S. C. A.

